No. 96-1800 (2)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1996

JANE RINI,

Petitioner,

vs.

UNITED VAN LINES, INC.,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Carmack Amendment to the Interstate Commerce Act preempts petitioner's specific state causes of action related to the respondent's claims-handling process.

STATEMENT OF INTERESTED PARTIES

Petitioner is Jane Rini. Respondent is United Van Lines, Inc. UniGroup, Inc. is United Van Lines, Inc.'s parent corporation. Neither UniGroup, Inc. nor United Van Lines, Inc. have any nonwholly owned subsidiary corporations.

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STATEMENT OF THE CASE

A. Statement of Facts

In August 1990, petitioner Jane Rini arranged for respondent United Van Lines, Inc. ("United") to transport household goods from South Carolina to Northampton, Massachusetts. The shipment comprised over 300 items and weighed 12,860 pounds. On the bill of lading, petitioner declared and signed for a released valuation of $60,000 for the entire shipment. In doing so, she set the carrier's maximum liability, pursuant to the Carmack Amendment, at $60,000 in the event of loss or damage. The released valuation also affected the freight charge for the shipment.[1] On August 28, 1990, United delivered the goods to Northampton. Upon opening the boxes several days later, petitioner could not locate eleven pieces of artwork.

In her formal claim, filed in October, 1990, petitioner sought $134,000 in damages, far exceeding the $60,000 released valuation she had declared for the entire shipment. None of the eleven pieces in question had ever been appraised or insured.

Pursuant to federal regulation, the United claims adjuster requested that petitioner provide some evidence of the value of

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1. Carmack permits contracting parties to set monetary limitations on carrier liability prior to shipping through the "released valuation" declared by the shipper in the bill of lading. 49 U.S.C. § 14706 (formerly 49 U.S.C. §§ 11707, 10730(a)). The released valuation is also used to calculate the freight charges on a shipment. A lower released valuation would result in a lower freight charge.

The Carmack Amendment has been amended since petitioner filed suit and now has different statutory citations. In her petition, petitioner has reproduced the Carmack Amendment in full in the form in which it appeared when petitioner commenced this action. The recent changes to the Carmack Amendment do not affect the preemption issues involved in this case.

the lost goods such as canceled checks, credit card or cash receipts, appraisals, insurance riders, or other similar documents.[2] After several requests for appropriate documentation, the claims adjuster formally denied the claim. As suggested by federal regulation, United offered petitioner a dispute settlement program administered by the American Arbitration Association.[3] She did not respond. Petitioner subsequently sent a letter asserting a claim under Massachusetts General Laws Chapter 93A, the state consumer protection statute, demanding $120,000 and threatening respondent with treble damages plus attorney's fees. Respondent denied the Chapter 93A claim due to improper documentation and on the ground that the claim was preempted by the Carmack Amendment.

B. Proceedings Below

Petitioner's complaint in the district court contained six counts. In addition to a federal claim under the Carmack Amendment, petitioner asserted state law theories of negligence, conversion, misrepresentation, violation of Chapter 93A, breach of contract and intentional infliction of emotional distress.

United moved to dismiss all state law claims as preempted by the Carmack Amendment. The Court in part allowed and in part denied the motion. It ruled that Carmack preempts only state causes of action for damages arising during actual transit and does not preempt claims related to carrier claims handling. Petitioner filed an amended complaint.

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2. 49 C.F.R. § 1005.4(b) requires that a carrier may not pay a claim without supporting documentation from the shipper.

3. Pursuant to 49 U.S.C. § 14708, a dispute settlement program is still required to settle disputes with shippers. At the time petitioner filed her case, this statute was codified at 49 U.S.C. § 11711.

From December 4 to December 14, 1994, the case was tried to a jury. Over objections, the court permitted petitioner to present evidence on both her state common law and statutory claims. The jury found that the petitioner had understood and consciously agreed to the released valuation declared in the bill of lading and thus had consciously limited United's maximum liability on the shipment to $60,000. Further, it found petitioner's actual loss was $50,000. On petitioner's claim for intentional infliction of emotional distress, the jury found in favor of United.

On the state law claims presented to the jury, $100,000 was awarded for negligence and misrepresentation in connection with United's claims handling. The jury also found that petitioner was thirty percent contributorily negligent. Sitting as factfinder on petitioner's claim under Chapter 93A, the court held United had violated the statute, trebled the $100,000 jury award and added costs, pre-judgment interest, and attorney's fees. On November 1, 1995, judgment was entered against United in the total sum of $538,636.32. United filed a timely notice of appeal on the issue of whether petitioner's state law causes of action related to United's processing of her claim were preempted by Carmack.

After briefing and oral argument, the First Circuit Court of Appeals, in an opinion by Chief Judge Torruella, reversed the judgment on petitioner's state law claims, holding them preempted under Carmack. In its opinion, the First Circuit stressed the importance of Congressional intent with respect to the scope of Carmack preemption. In determining that petitioner's claims thwarted Congress' purpose in enacting Carmack and, therefore, were preempted, the court reviewed Supreme Court precedent on the issue of Carmack Amendment preemption, federal interstate carrier claims-handling regulations, decisions from other circuits, and the practical effect petitioner's claims would have upon interstate shipping.

REASONS FOR DENYING THE WRIT

The Supreme Court should deny certiorari in this case for three fundamental reasons. First, with *Rini*, the First Circuit joins all other circuits that have decided the issue by holding that state claims relating to the claims-handling process are preempted by the Carmack Amendment. Second, despite petitioner's assertion to the contrary, the *Rini* decision adheres to constitutional preemption principles. Finally, *Rini*'s holding for preemption in no way grants carriers immunity in the realm of claims-handling. The federal scheme provides for both carrier penalties and shipper remedies.

I.

THE FIRST CIRCUIT'S DECISION IS IN LINE WITH THE DECISIONS OF OTHER CIRCUIT COURTS.

With *Rini*, the First Circuit joins the Second, Fifth, and Sixth Circuit Courts of Appeal in holding that Carmack preemption extends to the claims-handling process.[4] This is not a case where the First Circuit has issued a rogue opinion which calls for Supreme Court review. In fact, the Supreme Court denied review

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4. *Cleveland v. Beltman North American Co., Inc.*, 30 F.3d 373 (2nd Cir. 1994), *cert. denied*, 513 U.S. 1110 (1995) (federal common law claim related to processing of loss and damage claim preempted by Carmack); *Salzstein v. Bekins Van Lines, Inc.*, 993 F.2d 1187 (5th Cir. 1993) (Carmack Amendment and Interstate Commerce Commission regulations govern processing of claims for loss or damage to property); *Moffit v. Bekins Moving and Storage*, 818 F. Supp. 178, 179 (N.D. Tex. 1993) (state law causes of action related to the carrier's handling of claim preempted because "necessarily based on the contractual relationship contained in the Interstate Order of Service and Bill of Lading."), *aff'd by*, 6 F.3d 305 (5th Cir. 1993); *Ford Motor Co. v. Transport Indemnity Company*, 795 F.2d 538 (6th Cir. 1986) (refused to judicially imply a remedy into the federally regulated scheme in regard to claims processing).

of the Second Circuit decision.[5] Rather, the *Rini* court's decision is in keeping with the view expressed by all federal appellate courts that have addressed the issue, namely that interjecting state law into the realm of interstate carrier claims-handling would destroy Congress' purpose to achieve uniformity in interstate carrier liability.

II.

THE FIRST CIRCUIT FOLLOWED CONSTITUTIONAL PREEMPTION PRINCIPLES.

The First Circuit recognized the constitutional principle that state law is not to be preempted by federal law "unless that is the clear and manifest purpose of Congress." (Opinion at p. A-3[6], citing *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947).) While petitioner erroneously states that the First Circuit "failed to take into account the specific goals" of the Carmack Amendment (Petition at p. 11), the *Rini* court considered all relevant sources to ascertain Congressional intent in enacting the statute. As no legislative history accompanied Carmack's passage, the First Circuit had to look elsewhere to discern Congressional purpose. Appropriately, the court examined Supreme Court precedent on Carmack, the federal regulations governing interstate household goods carriers, the decisions of other circuits and the practical effect of petitioner's state law claims upon Carmack's overall purpose.

The *Rini* court cited the Supreme Court's consistent holdings over a period spanning eighty years that Congress' goal in

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5. *Cleveland v. Beltman North American Co., Inc.*, 30 F.3d 373 (2nd Cir. 1994), *cert. denied*, 513 U.S. 1110 (1995).

6. The "A-_" citations are to the appropriate pages in the appendix to petitioner's petition where the First Circuit opinion is reproduced in full.

enacting Carmack was to achieve uniformity in regard to carrier liability. (Opinion at A-4 - A-5.) Petitioner, however, avoids discussion of this precedent as well as the First Circuit's examination of it. The First Circuit cites the Supreme Court's holding in *Adams Express v. Croninger*, 226 U.S. 491 (1913), that Congress intended to supersede all state law respecting carrier liability by enacting Carmack:

> That the legislation supersedes all the regulations and policies of a particular state upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue, and limits his power to exempt himself by rule, regulation, or contract. Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject, and supersede all state regulation with reference to it.

(Opinion at A-4, quoting *Adams Express*, at 505-06.)[7]

While *Adams* speaks about Carmack preemption in broad terms, the *Rini* court did not mechanically apply *Adams* in holding that petitioner's state law claims fell within Carmack's preemptive scope. Rather, it closely analyzed other Supreme

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7. Petitioner suggests that the savings clause to the Carmack Amendment, 49 U.S.C. § 15103 (formerly 49 U.S.C. § 10103) is to be read to preserve all remedies not in conflict with the Amendment. The Supreme Court, as early as *Adams Express*, concluded that the savings provision excluded all state law claims because to hold otherwise would destroy the uniformity fundamental to the statutory scheme. *Adams Express* at 507-08. *See also Kansas City Southern Railway Co. v. Carl*, 227 U.S. 639, 649 (1913).

Court cases analogous to *Rini* for guidance as to whether petitioner's state claims are preempted. The First Circuit noted that in *Missouri, Kansas & Texas Railway Company of Texas v. Harris*, 234 U.S. 412 (1914), the Supreme Court upheld a general state statute allowing a nominal attorney fee to be added to the costs of judgment in civil cases because the statute did not increase carrier liability but merely awarded the costs of bringing a civil suit. The Court further considered *Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.*, 237 U.S. 597 (1915), in which the Supreme Court held that a South Carolina statute imposing a fine of $50 on carriers for failure to pay damage claims within 40 days was preempted by Carmack. The Supreme Court distinguished the South Carolina punitive statute from the attorney fee provision in *Harris* by pointing out that the $50 fine increased a carrier's liability for loss or damage to goods beyond that allowed in other jurisdictions, while the provision for attorney fees did not enlarge the carrier's responsibility for loss or damage to goods. The First Circuit drew the following conclusion:

> The lesson from these cases is that the state statutes are preempted by the Carmack Amendment if they "in any way enlarge the responsibility of the carrier for loss or at all affect the ground of recovery, or the measure of recovery."

(Opinion at A-6, citing to *Varnville* at 603.) Because the petitioner's state law claims would subject the respondent to a damage award not available in any other jurisdiction, and thereby would directly increase the carrier's responsibility and measure of recovery, the First Circuit held such claims to be preempted.

The *Rini* court went on to consider the regulations promulgated by the Interstate Commerce Commission, the

agency empowered to oversee carriers of interstate household goods.[8] It observed that the regulations govern investigation and disposition of claims and provide for sanctions against carriers that fail to handle claims properly.[9] (Opinion at A-6 - A-7.) The First Circuit noted that constitutional precedent precludes it from relying on the regulatory scheme **alone** as sufficient grounds for finding Petitioner's state claims preempted but viewed the scheme as additional evidence of Congressional intent:

> Although "the mere existence of a federal regulatory or enforcement scheme . . . does not by itself imply preemption of state remedies," *English v. General Electric Co.*, 496 U.S. 72, 87 (1990), the above federal regulations indicate that the claims process is within the scope of the shipper-carrier relationship that the federal government seeks to regulate.

(Opinion at A-7.)

8. As pointed out by petitioner, effective January 1, 1996, the Interstate Commerce Commission ("ICC") has been abolished. Although the ICC has been eliminated, the federal government retains exclusive jurisdiction over interstate household goods carriers through regulation by both the Surface Transportation Board and the Department of Transportation. 49 U.S.C. §§ 701, 702.

9. Petitioner erroneously asserts that there is no evidence that the ICC believed its regulations should preclude state court remedies for carrier conduct during the claims process. The pervasiveness of the regulations speaks to the fact that the ICC viewed claims-handling as within its control. Moreover, the Tenth Circuit has noted that "[t]he ICC has set its face against punitive damages for violations of the Interstate Commerce Act." *Overbrook Farmers Union Cooperative Association v. Missouri Pacific R. Co.*, 21 F.3d 360, 364 (10th Cir. 1994). State claims like those asserted by petitioner seek punitive damage awards against carriers with respect to ICC-regulated activity.

Since taking over jurisdiction of interstate household goods carriers, the Surface Transportation Board and Department of Transportation have retained the substance of all of the claims-handling regulations.

The *Rini* court also looked to the Second Circuit's decision in *Cleveland v. Beltman* for guidance. Recognizing the similarity of issues, the First Circuit concurred with *Cleveland*'s reasoning:

> Like our sister circuit before us, we note that although "[i]t may be that Congress' enforcement scheme does not provide a sufficient deterrent to the type of conduct defendants employed in this case," *id.* at 379, we find that the federal scheme has preempted negligence, misrepresentation, and chapter 93A claims.

(Opinion at A-9.)

Finally, the court determined that the practical effect of upholding the state claims asserted by petitioner would be to undermine Congressional purpose to achieve uniformity. Such claims would impose damage awards far in excess of those allowed in other jurisdictions. The court held: "[W]e note that our ruling preserves the uniformity of the federal scheme by protecting the federal government's exclusive jurisdiction over the shipper-carrier relationship, the importance of which has been underscored on numerous occasions." (Opinion at p. A-9.)

The First Circuit closely adhered to the core constitutional preemption principle that " '[t]he purpose of Congress is the ultimate touchstone' in every preemption case." *Medtronic, Inc. v. Lohr*, 518 U.S. __, 116 S. Ct. 2240, 2250 (1996) (citations omitted). The court reviewed all available sources to arrive at its conclusion that Congressional intent in enacting Carmack was to preempt state claims like those raised by petitioner. The *Rini* opinion is in line with Supreme Court preemption doctrine.

III.

THE FIRST CIRCUIT'S DECISION DOES NOT GRANT INTERSTATE CARRIERS IMMUNITY IN REGARD TO CLAIMS-HANDLING.

Petitioner's argument that the First Circuit's decision effectively grants carriers immunity in the realm of the claims-handling process is baseless. ICC statutes and regulations provide for sanctions for carrier misconduct in processing a claim, including revocation of a carrier's operating certificate.[10] *See Zola v. I.C.C.*, 889 F.2d 508, 509 (3rd Cir. 1989), *cert. denied*, 495 U.S. 947 (1990); *AAAcon Auto Transport, Inc., Investigation and Revocation of Certificate*: No. MC-C-7287, 1984 Federal Carrier Cases ¶37,113 (CCH) (certificate revoked for wilful violation of I.C.C. order to cease and desist from "not promptly and thoroughly investigating and processing claims.")

Congress has further provided for arbitration of claims against household goods carriers. If a carrier fails to make a dispute resolution program available, the shipper may recover attorneys' fees if successful in litigation. 49 U.S.C. § 14708(d).[11] While *Rini* effectively limits a shipper's potential damages to the value of the lost or damaged goods, any other result would thwart Congress' goal of achieving uniformity in carrier liability.

Petitioner incorrectly suggests that this case conflicts with *Medtronic*, 518 U.S. __, 116 S. Ct. 2240 (1996), to the extent that it limits petitioner's recovery by preempting her claims. While their preemption holdings are opposite, both *Medtronic*

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10. As noted elsewhere in this brief, the claims handling regulations have been retained by the Surface Transportation Board and the Department of Transportation.

11. Formerly 49 U.S.C. § 11711(d).

and *Rini* correctly followed Congressional intent. *Medtronic* held that a federal statute governing the pre-marketing requirements of medical device manufacturers did not preempt state common law claims for personal injury. The Court determined that both the language of the statute and its legislative history evinced an intent to preempt only state laws which impose specific pre-marketing requirements on medical device manufacturers and not common-law damage claims. *Medtronic*, therefore, held that Congress did not intend the statute's preemptive scope to include personal injury claims which would have left injured plaintiffs without any legal recourse.

In both *Medtronic* and *Rini*, effectuating Congressional purpose was considered paramount. *Medtronic* found no Congressional intent to preclude common law personal injury claims. The First Circuit held that petitioner's state claims run counter to the uniformity Congress sought in the area of interstate carrier liability. *Rini*, therefore, is entirely in accord with *Medtronic*.

CONCLUSION

The Court should deny certiorari in this case because the First Circuit's decision concurs with the opinion of the other circuits that have examined the issue, the *Rini* court recognized and adhered to constitutional preemption principles, and its decision does not grant interstate household goods carriers immunity from liability for claims-handling misconduct.

Respectfully submitted,

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